ECONOMIC COUNCIL LETTER

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The Supreme Court of the United States
Do Communist Influences Mold Its Decisions?

JUST two years ago, the Senate was deeply split by a fierce debate over S 2646, the Jenner-Butler Bill to take from the Supreme Court the right to hear appeals in a variety of cases concerned with defense of our country against subversion from within. The high court had shocked public opinion throughout the world by a series of decisions which virtually demolished the legal defenses against internal communism which had been built up over the years by Congress and the State Legislatures.

In a series of "Red Mondays" the Court had ruled that State Legislatures could not pass laws to end communist subversive activities where Congress had once entered the field. State Bar Associations could not keep known communists from practising in our courts. State Departments of Education could not remove a college teacher because he has said under oath that his connections with communism would incriminate him. The Justices ruled that the confidential records of the FBI must be shown to those accused of communist activity. They said that the State Department could not withhold passports to known communists. They set arbitrary limits on Congressional power to investigate through its own Committees. They ruled that the communist party was not engaged in subversion until it had reached the stage of open action. That is, Moscow propaganda, organization, training and policy sabotage were not "subversive"!

If the Supreme Court had been an agency of Soviet Russia it could hardly have rendered more harmful decisions.

A measure of the enormity of these decisions is indicated by the Steve Nelson case. The Senate Internal Security Subcommittee has published a report of about 70 pages giving in detail the life work of Steve Nelson in the service of communism: by disrupting American industries, leading the foreign born to serve Moscow, serving as a Commissar in the Spanish Civil War (where American volunteers were murdered by the communists who wanted their passports for espionage) and by his injection of Red espionage into atomic energy research, long before most Americans had ever heard of the atom bomb. The Nelson decision said in effect that State Legislatures could not help defend their people against such men.

Popular interest in S 2646 was very high. Hundreds of pages of testimony were taken by the Judiciary Committee. Debate on the floor went on for months.

The bill almost passed. Only the subtle masterminding of Lyndon Johnson saved the Court from Senatorial rebuke by a margin of one vote. "Seldom has the Capitol seen so cold-blooded a suppression of the popular will," said *Human Events* for September 1, 1958. Johnson's management of the Senate and Sherman Adams' pressure from the White House did the job.

How much debate have we heard on communist influences over the Supreme Court since September 1958? Virtually none. A curtain of silence has descended over the Court issue just as a curtain of silence has descended over the communist influence in foreign policy making.

Silence on the Supreme Court's rulings on Moscow's legal activities within our borders, is, like the silence over State Department softness toward the Reds, proof of the unchallenged victory of the communists over public expression of what deeply concerns our people. The communist leaders have decided that the best way to keep Americans from resistance is to keep them from discussions like those stirred up by Senators Wherry, McCarthy, and Jenner, over our government's suicidal weakness in the face of the communist design for our destruction from within.

DOES the silence mean the influences over the Supreme Court have declared a truce and we will lose no more ground? Even that cowardly hope is out. We have no basis for confidence that all the damage has been done. Our enemy does not give up because he is silent. The danger is greater, not less.

Senator Eastland in a speech on July 8, 1958 tabulated the record of the members of the Court

on security cases to that date. The left-wing Justices had a record hard to misinterpret:

Decisions on Internal Security

	Against	For
Warren	36	3
Black	71	0
Frankfurter	56	16
Douglas	66	3
Brennan	18	2

With the exception of Frankfurter four of them voted almost 100 per cent against laws carefully devised by our elected Legislatures to safeguard national security. In August, 1958, the Conference of Chief Justices of the States approved a historic report criticizing the Supreme Court for its lack of "judicial self-restraint" in its interpretation of our laws. What does this signify for the future? What may we expect when new problems of American survival are brought before the Court?

The Supreme Court has ahead of it critically important decisions on the Subversive Activities Control Act (SAC) which requires communists to register as agents of a foreign power. It has critically important decisions on the effects of civil rights legislation on the ancient rights of local control over crime, police, schooling, suffrage, and other individual rights. It has ahead of it major decisions on the United Nations Charter and other UN legislation, on our sovereignty and our constitutional law.

The Subversive Activities Control Act of 1950 was a triumph for the American belief that even conspiracies can be handled by strictly legal methods without resort to high handed action or official violence to meet the threat of violence. The law, shaped under the guidance of Senator Pat McCarran, set up a Subversive Activities Control Board. This Board is to decide after full open hearings whether an accused organization is in fact a "communist action" or a "communist front" group under the direction of Moscow or Peiping. The law imposes on such organizations only the same requirement placed on agents of any foreign government, so that Americans may know with whom they are dealing.

The key to enforcement of this law is the upholding by the Supreme Court of the Board's finding that the communist party is communist. The Supreme Court has skilfully avoided coming to grips with this question.

The SAC Board held hearings and gathered judicial evidence that the communist party was a communist action group. It submitted its findings in April 1953 and ordered the communist party USA to register under the law.

The rest is futility. The Court of Appeals upheld the Board, but in 1956 the Supreme Court decided the findings were "tainted" by doubts of the credibility of three witnesses. Without arguing further the strong proof that these witnesses were trustworthy, the Board re-submitted its case with the testimony of the three excluded. They were confident that proof was complete even without their evidence.

Again the Supreme Court sent the case back, this time for production of reports made to the FBI by two witnesses. This new requirement was set up to meet the bitterly controversial Jencks decision opening FBI reports to those accused of communism. Nothing has been decided yet. All secondary action by the Board against communist fronts is held up until they have Supreme Court approval of their findings that the communist party USA is communist!

In his discussions of S 2646 Senator Eastland pointed out that skilfully planned delays and blocking of the key decisions needed by the SAC are as effective in hamstringing national resistance to Communism, as were the openly helpful decisions of the "Red Mondays."

THERE is another area where confusion and delay have been almost as dangerous as frank and open Court support of communist legal arguments.

The SAC Law was amended in 1954 to give the Board jurisdiction over associations which were "communist-infiltrated." This is an important step blocking Red efforts to take over reputable American organizations, including labor unions, and turning them into "fronts."

Let us quote from the Board's own statement in its Report for 1958, on what this means:

> "When a decision of the Board, finding an organization to be Communist-infiltrated, becomes final by operation of law, that organization, if it be a labor union, thereafter becomes ineligible to:
>
> (1) Act as . . . bargaining agent of any employees under the NLRB.
>
> (2) Make, or obtain hearings on, any charge under Section 10 of such Act; or
>
> (3) Exercise any other right or privilege, or receive any benefit . . . provided by such Act . . . ."

The SAC Act is therefore the key to breaking the communist grip on certain labor unions, including some which are vital for national defense. Without a Court decision finding the Communist Party USA is subversive, the National Labor Relations Board has no choice but to give these unions their full bargaining rights. Employers must bargain with them "in good faith," and employees may be compelled to join the unions as the price of holding their jobs, and compelled to pay part of their wages, as dues, to union treasuries which communist officers may spend for their own ends. **No one in the government can act under the SAC Law until the Court has spoken.**

THE Senate Internal Security Subcommittee in its report for 1958, published in August, 1959, gives the story of LaRue I. Berfield, an American veteran, who worked for nineteen years for the Sylvania Electric Company. In 1949 he decided his union, the United Electric and Machine Workers of America, was communist-dominated, and he led a movement to oust the union as bargaining agent for his plant.

The UE was voted out, but ten years later won the election. Under the closed shop agreement, they ordered Mr. LaRue to rejoin the union or be fired. LaRue appealed to the Internal Security Subcommittee. This Committee decided there was nothing it could do to help him get his job back. The Supreme Court had ruled that a man has job protection, even if he associates with communists; but he has no job protection if he refuses to associate with communists who control a union vital to national defense.

The Subcommittee Report says, "It is a plain fact that the United Electrical, Radio, and Machine Workers of America is communist dominated. It was thrown out of the CIO in 1949. Many of its key officials have been identified in sworn testimony as members of the communist party. No responsible person disputes the fact, nor will UE officials do so when testifying under oath."

They conclude, "The distressing omen in this story is the fact that a plant engaged in vital defense work must now depend for its working force on a union led by persons who have little sympathy with strengthening the defense of this nation; and that under the present situation, absolutely nothing can be done about it."

Congress has acted. The Executive branch has acted. But the Supreme Court has not acted.

The Subcommittee report says: "In 1955 the Subversive Activities Control Board began proceedings to have the UE designated as a subversive organization. . . . Action on the UE and other subordinate cases was held up pending determination of another action to have the communist party USA declared a subversive group. As of December 31, 1958 the latter case was still bogged deep in legal maneuverings."

It is still bogged down. The United States government with its forty billions for defense and forty billions for other activities, cannot get subversive unions out of their entrenched positions in occupations vital to defense against communist attack.

The Supreme Court has ahead of it possible rulings on many issues in our relations with the United Nations and its affiliated agencies. How tight are the bonds tying us into the UN, in ways we may not yet have noticed? What of the UN expeditionary force, the germ of the armed forces of world government?

The One Worlders will try to get legal status for world government forces, under our laws, before they expand the UN armies to override the armed forces of the nations including the United States. What problems of sovereignty are involved in international agreements, for inspection teams on nuclear testing which will operate on our territory and will include citizens of the USSR and Red China? The really important decisions on dilution of our national sovereignty through "treaty clause" agreements with foreign countries are still to come.

THE Bang-Jensen case turns the light clearly on the UN Secretariat. That record has now been compiled by Julius Epstein in *American Opinion* for May, 1960. It deserves the fullest study by those who want to know what kind of administrative body will exercise the authority over Americans granted to the UN by decisions of the Supreme Court.

At home we have also the *terra incognita* of coming appeals under the civil rights laws.

It is often forgotten that the American Constitution was designed *for the protection of minorities*. Most of the people who shaped American government and law had a vivid memory of persecution. They believed deeply that the central government was more likely to be tyrannical than local governments. They imposed checks and balances on the central government because they believed that once it gained predominant power its tyranny would be far greater—and harder to expose—than the same tyrannies of local power. As Dean Manion has made so clear, the communists know the strongest barrier to their advancement in the United States is the Federal-State division of power.

No one is asking the most important question in civil rights. If we destroy local autonomy in education, the suffrage, police, criminal courts—what guarantee is there that minorities will have more protection? They may have much less.

What "protection" against tyranny has the centralized government of the USSR afforded to minorities—farmers, industrial workers, soldiers, government employees, Jews, nomads, gypsies or any "minority" momentarily out of favor? There is no evidence that federalization of voting, schools, criminal prosecution or employment, will, *in the end*, give protection to Negroes or any other minorities in this country.

The Supreme Court does not stand alone outside American life as a whole. It is the mouth of

a river. The currents that flow out through the mouth of that river originate in little streams far up in the hills, and are fed by branches drawing their freight from a broad territory.

The Supreme Court is the summing up of developments that have been going on for years—in our lower courts, in the Bar Associations, in the law schools, in education, in politics, in national philosophy and the growing influence of alien philosophies in shaping our destiny.

We know of the strange influences in the selection of the law clerks for the Supreme Court Justices, the rise of committees and organizations favorable to "world law," hostile to the FBI and Congressional Committees investigating communism. We know of the softening philosophy of relativism, of enlarging of executive powers far beyond the design of the Constitution. We know all these little streams lead directly to one end.

How long are we going to remain asleep?

Attention!

Before the Senate right now is a sneak abandonment of the Connally Amendment on the World Court. The vote is on a "protocol" to a new and very complex series of conventions on "the law of the sea."

Covering many details and possibly dangerous changes in the law, the Soviet Union and communist China have been vigorously extending their claims along the China Coast, the East Indies and all the Islands of Indonesia, *by changes in the law of the sea.*

Cuba has ratified this convention and is near enough for plenty of disputes of the same kind in the Caribbean. This whole back door abandonment of the Connally Reservation has been rushed through the Senate without debate and even without printed records for the Senators themselves. But the most critical vote of all, *on the protocol*, is still to come.

If this protocol is ratified, the World Court could step in and order the United States, in effect, to vacate its naval base in Cuba. It could order the U.S. out of Panama. It could control anything connected with the seas, including the territorial seas and contiguous zones.

This is a sneak attempt, brought up in the closing days of Congress, to destroy American sovereignty.

But you American citizens can block this attempt. If the Senate hears from enough men and women, this protocol will not be ratified.

Wire or write your Senators immediately to vote against the so-called "Executive N of The Annex V on Compulsory Settlement of Disputes," under the convention already accepted by the Senate. Otherwise all the benefits of the Connally Reservation will be irretrievably lost, almost without knowledge of the Senate itself.

This is one of the most vital requests we ever made of our readers.

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